IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 699 OF 1996

Subhash K. Thakkar
of Bombay Indian Inhabitant
residing at Flat No.8B,
Sunita Apartment, Ridge Road,
Bombay - 400 026 .. Petitioner

Vs.

1. Sqn. Ldr. Rushad Dinshaw

2. Mrs. Nina w/o Geave Dinshaw

3. Mrs. Nawaz w/o Sqn.Ldr. R. Dinshaw
All residing at Air Force Station,
Yelahanka, Bangalore.

4. Mr. S.B. Chincholikar
Competent Authority, Konkan
Division, Bombay, an Authority
under the provisions of the
Bombay Rent Act and under Section
13A-1 of the Act.

5. Gautam K. Thakkar
72, Sherman, Bhaktawar
Co-operative Housing Society
Ltd., 222, Narayan Dabholkar
Road, Bombay 400 006. .. Respondents

Mr. H.S.S. Murthy with Ms. Vandana Santara and Ms. Sapna Sawant for Petitioner.

Ms. Rajesh Shah i/by Ms. Shah Desai Doijode Phaterphekar for Respondent Nos.1 to 3 absent.

Ms. Manjula Rao with Ms. Kokila Karla for Respondent No.5.

CORAM: B.H. MARLAPALLE, J.
Reserved on : July 25, 2005.

Pronounced on: August 11, 2005.

ORAL JUDGMENT:

1. This Civil Revision Application filed under Section 115 of the C.P.C. brings in question the legality and correctness of the Decree of eviction passed by the Competent Authority, Konkan Division, Mumbai on 2/8/1996 in Case No.1 of 1994 arising out of an application submitted by the joint landlords under Section 13A(1) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 (for short "the Bombay Rent Act").

2. The brief facts, not in dispute, are as under:-

. One Mrs. Piloo Irani, who was a member and share holder of Bakhtavar Co-operative Housing Society, was the owner of Flat No.72 located on the 7th Floor of the building known as "Sherman", situated in the said Co-operative Society and admeasuring about

1235 sq.ft. By an agreement of lease dated 1/8/1967 the said flat was leased out to the petitioners, who are real brothers, on a monthly rent of Rs.900/-. On the same day another agreement was executed between the petitioner no.1 and the landlady in respect of furniture, fixtures and fittings on payment of Rs.400/- per month. The landlady instituted RAE Suit No.387/1277 of 1984, inter alia, on the following grounds:-

(a) Breaches of terms and conditions of tenancy.
(b) Unauthorised alterations/additions.
(c) Tenant acquiring suitable accommodation.
(d) Bona fide requirements of landlady.
(e) Default in payment of rent.

. In paras 7 and 8 of the plaint the landlady had explained that the suit flat was required for her son - a Civil Engineer who wanted to start his career in construction along with his Uncle - a leading builder in Mumbai and the said son did not have any alternative accommodation in Mumbai or anywhere else. Her husband, who was a Government Contractor, had to

come to Mumbai for work and as the plaintiff or any of her family members did not have any accommodation in Mumbai, they were living with their relations while in Mumbai. Under all these circumstances, the landlady required the vacant and peaceful possession of the suit flat. This suit came to be dismissed on 12/9/1996.

3. It appears that on or about 14/6/1990 Mrs. Irani executed Deed of Gift in favour of the present respondent nos.1 to 3 and gifted the suit flat to them jointly. The value of the suit flat in the said Gift Deed was shown as Rs.39,300/- and it was executed not by the landlady but by her son as the Constituted Attorney. Respondent No.1, who was at the relevant time a member of the Indian Air Force, is the husband of respondent no.3 and respondent nos.2 and 3 are the daughters of the original landlady. While RAE Suit No.387/1277 of 1984 was pending, the respondent no.1 applied to his Competent Authority and a certificate came to be issued on 15/7/1992 certifying that he was the owner of the suit premises and had no other alternative suitable accommodation for his own

residence in the city of Mumbai. On the basis of this certificate, respondents submitted an application under Section 13A(1) of the Bombay Rent Act before the Competent Authority under the said Act, on or about 17/2/1993, which came to be registered as Case No.1 of 1994. Needless to mention the certificate issued by the Air Force Officer on 15/7/1992 in favour of the respondent no.1 was based on the Gift Deed dated 14/6/1990, transferring the suit flat in favour of respondent nos.1 to 3 jointly. The landlady died on 7/1/1994 and the share certificates in respect of the suit flat came to be transferred in favour of respondent nos.1 to 3 on 27/4/1994. On 14/1/1994 the respondent no.1 had applied for premature retirement and he claimed to have retired from the Air Force on 13/1/1995. On 21/2/1992 the petitioners made an application for leave to contest the application filed under Section 13A(1) of the Bombay Rent Act. On 10/10/1994 respondent nos.1 to 3 submitted an application to the Superintendent of Stamps offering to pay deficit stamp duty and on 21/10/1994 they submitted an application for amendment of the plaint which was allowed by the Competent Authority on the

same day. The deficit stamp duty was claimed to have been paid on 14/12/1994. In the pending suit before the Small Causes Court at Mumbai, respondent nos.1 to 3 submitted an application on 24/4/1995 for being impleaded as the plaintiffs in place of Mrs. Piloo Irani and as noted earlier, the same suit came to be dismissed on 12/9/1996 i.e. prior to the date when the impugned order came to be passed by the Competent Authority allowing the application for eviction. The operative part of the impugned Decree reads as under:-

> ". Application of applicants No.1,2,3 is hereby allowed. The respondents No.1 & 2 be evicted from the suit premises U/s.13A(1) of the Bombay Rent Act, 1947. The respondent No.1 and 2 shall hand over the vacant and peaceful possession of the suit premises i.e. Flat No.72 on 7th floor, Unit 'Sherman' of Bakhtawar Co-Op. Hsg. Society Ltd. situated at 222, Narayan Dabholkar Road, Bombay 400 006 to the applicants No.1 to 3 within 30 days from the date of order otherwise the applicant's No.1 to 3 be put in possession of the suit premises by evicting the respondent No.1 & 2.
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> . The respondent No.1 and 2 are hereby directed to pay Rs.2250/- per month as a mesne profits from the date of application i.e. 5.1.94 till they hand over possession of the suit premises to the applicants."

4. By an order dated 25/10/1996 this court while granting Rule, directed that the petitioners shall not be dispossessed from the suit premises as a result of the impugned Decree and during the pendency of the petition, subject to certain conditions, namely, petitioners to deposit the entire arrears of rent upto 31/10/1996, they shall deposit the rent for the subsequent months from November, 1996 on or before 15th of each succeeding month at the agreed rate, they shall not create any third party interest or sub-let, assign or part with possession of the premises in question and shall furnish an undertaking that in the event of dismissal of this petition they shall hand over the peaceful and vacant possession of the suit premises to the respondents within two months. Arrears of rent and rental amount from November, 1996 came to be deposited with the Registry of this Court till July 2003. The Registry noted that the rental amount for the month of August 2003 to March 2005 has not been remitted and the reason for the same appears to be the fact that the petitioner no.2 purchased the suit flat from respondent nos.1 to 3 and by filing

Civil Application No.47 of 2004 the petition memo has been amended, as a result of which the petitioner no.2 has been deleted and has been transposed as respondent no.5. Resultantly, the petition has been prosecuted by the original petitioner no.1, who claims to be the real tenant and the petition has been opposed by the added respondent, who was the original petitioner no.2. The landlords - original respondent nos.1 to 3 remained absent.

5. As the petition is not contested by the original landlords and instead it is being contested by the original petitioner no.2, on that ground alone this petition could have been allowed. One of the joint Decree Holders has stepped into the shoes of the landlords who were successful in obtaining the decree for eviction and the landlords have withdrawn their contest by remaining absent. The judgment debtor cannot support the decree merely because he has now stepped into the shoes of the landlords. Notwithstanding this leal position, it would be expedient to examine the challenge to the Decree on merits as well.

6. Section 13A(1) of the Bombay Rent Act reads as under:-

> 13A(1). Notwithstanding anything contained in this Act -
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> (a) a landlord, who is a member of the armed forces of the Union, or who was such member and is duly retired (which term shall include premature retirement), shall be entitled to recover possession of any premises, on the ground that the premises are bona fide required by him for occupation by himself or any member of his family (which term shall include a parent of other relation ordinarily residing with him and dependent on him); and the Court shall pass a decree for eviction on such ground if the landlord, at the hearing of the suit, produces a certificate signed by the Head of his service or his Commanding Officer to the effect that -
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> (i) he is presently a member of the armed forces of the Union or he was such member and is now a retired ex-serviceman;
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> (ii) he does not possess any other suitable residence in the local area where he or the members of his family can reside;
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> (b) x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x x
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> Explanation 1.- For the purposes of clause (a) of this section, the expression "the Head of this service", in the case of officers retired from the Indian Army includes the Area Commander, in the case of officers retired from the Indian Navy includes the Flag Officer Commanding-in-Chief, Western Naval Command,

> and in the case of officers retired from the Indian Air Force includes the Station Commander.
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> Explanation 2.- For the purposes of this section, any certificate granted thereunder shall be conclusive evidence of the facts stated therein."

6A. The term "landlord" has been defined under Section 5(3) of the Bombay Rent Act and the said definition reads thus:-

> "(3) "landlord" means any person who is for the time being receiving, or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord; any and further includes in respect of his sub-tenant, a tenant who has sub-let any premises; and also includes in respect of a licensee deemed to be a tenant by section 15A, the licensor who has given such licence."

7. In the instant case, as noted hereinabove, the original landlady had already instituted eviction proceedings by filing RAE Suit No.387/1277 of 1984 and while the said suit was pending she transferred the suit flat by way of a Gift Deed signed by her son as

Constituted Attorney on 14/6/1990 and the application under Section 13A(1) of the Bombay Rent Act came to be filed by the new landlords on 17/2/1993, on the basis of the certificate issued in favour of one of them, by the Air Force Officer on 15/7/1992. The said application has been allowed by the impugned Decree notwithstanding the fact that the suit for eviction, instituted earlier, was still pending before the Small Causes Court at Mumbai. Under the circumstances, the following issues arise for decision:-

(a) Whether Case No.1 of 1994 was maintainable before the Competent Authority while RAE Suit No.387/1277 of 1984 was pending before the Small Causes Court and for the same relief of eviction of the very same tenants who were sought to be termed as illegal occupants in the application submitted before the Competent Authority?

(b) Whether the application under Section 13A(1) of the Bombay Rent Act was maintainable on the basis of the certificate issued by the

Air Force Officer in favour of one of the joint owners only, more so when the suit flat remained as a common property of all the three donees all along?

(c) Could the issue of bona fide requirement of Respondent No.1 be the basis for filing the application before the Competent Authority when the suit flat was owned by three different persons being the members of two different families?

8. The Competent Authority in the impugned decision held that the applicant is a member of the Indian Armed Forces, the applicants had produced valid certificate as required under Section 13A(1)(a), they were the landlords of the suit premises, the petitioner was the tenant of the applicants and the applicants required the suit premises bonafide for their use and occupation. The Competent Authority further held that the application under Section 13A(1) was maintainable. It appears that issue nos.1 and 4 were framed and answered by the Competent Authority as

if the application was filed only by the applicant no.1. The applicants had claimed title to the suit flat initially solely on the basis of a Deed of Gift dated 14/6/1990 made by the original landlady and the mother of applicants no.1 and 2. This gift deed by itself could not transfer the ownership of the flat unless it was acted upon by intimating to Bakhtavar Co-Operative Housing Society Ltd. and transferring the share certificates from the name of Mrs. Piloo Irani to the names of the applicants. Similarly, the applicant no.1 could not have made an application for issuance of certificate under Section 13A(1) of the Act to his Competent Officer before the ownership was transferred. Mrs. Piloo Irani died on 7/1/1994 and the application before the Competent Authority was made during her life time on 17/2/1993, whereas the shares were transferred in the name of the applicants on 27/4/1994. Thus the application moved on 17/2/1993 before the Competent Authority was not tenable as the applicants were not the landlords of the suit flat in the eyes of law on that day. Similarly, the certificate dated 29/6/1992 issued by the Competent Officer under Section 13A(1) in favour of the

applicant no.1 could not be the basis to file application No.1 of 1994. Such an application could have been moved before the Competent Authority only after 27/4/1994. A fresh certificate under Section 13A(1) was not obtained by the applicant no.1 at any time after the suit flat was transferred jointly in the names of the applicants and applicant no.1 retired prematurely on 13/1/1995.

8A. This court in the case of Chandrakant Trimbak Ghanekar v. Prabhakar Muralidhar Bhagat, reported in **1990 Maharashtra Rent Control Journal, page 407**, has held that the requirements of Section 13A(1) have to be strictly complied with and the certificate produced by the landlord must also comply the requirements strictly. In the said case the certificate mentioned that the landlord was a member of the Union Forces and this court held that the same was not equivalent to his being a member of the Armed Forces and consequently the decree passed in favour of the landlord under Section 13A(1) was set aside on the ground that the certificate did not strictly comply

with the provisions of the said section.

8B. On the day the application was moved before the Competent Authority, the suit filed by the original landlady i.e. RAE Suit No.387/1277 of 1984 was pending and for the same reliefs, but at the instance of different landlords. On 24/4/1995 the applicants had already made an application in the said suit for being impleaded as landlords in place of Mrs. Piloo Irani and the said application was allowed. The suit was pending on the file of the court of Small Causes at Mumbai when the Competent Authority allowed the application by the impugned decision dated 2/8/1996. Either the applicants were doubtful that they would not succeed before the Competent Authority and, therefore, they wanted to proceed with the pending suit before the Small Causes Court at Mumbai or they sought eviction on independent grounds in two different proceedings. Nonetheless, the application has been allowed by the Competent Authority on the ground of bonafide requirements. Unless a certificate was issued by the Competent Officer after the suit

flat was transferred in the name of the applicants, it cannot be accepted that there was a valid application pending before the Competent Authority and such a certificate could have been filed even before the written arguments were submitted by the applicants on 28/6/1996. This has not been done and, therefore, there is non compliance of the mandatory requirements of Section 13A(1) as has been held by this court in the case of Chandrakant Trimbak Ghanekar vs. Prabhakar Muralidhar Bhagat (supra).

9. The applicants no.2 and 3 before the Competent Authority are sisters and applicant no.1 is the husband of applicant no.3. Thus applicants nos.1 and 3 are members of one family and applicant no.2 is a member of her own family and she cannot be called to be a member of the same family as that of applicants no.1 and 3. Joint owners of the same family can file an application before the Competent Authority under Section 13A(1), but members of different families cannot do so. Everyone of the applicants is a joint owner of the suit flat. This court in the case of

Shripad Vasudeo Vatve and anr. vs. Narhar Bhargav Karmarkar reported in **1992(2) Bom.C.R. 630**, by following the decision in the case of Shivram Anand Shiroor vs. Mrs. Radhabai Shantaram Kowshik reported in **AIR 1984 SC 786**, held that one of the co-owners would be entitled to institute a suit for possession by resorting to the special remedy provided by Section 13A(1) of the Bombay Rent Act. This court noted that two real brothers were the co-owners of the suit property and there was nothing on record to show that they had separated. This Court inferred that they were members of the same joint Hindu family and hence the application filed by one of them under Section 13A(1) was maintainable.

9A. On the other hand, in the case of Shri C.K.S. Rao vs. Miss. Kanta Udharam Jagasia reported in **1991 Mah.R.C.J. 206**, the applicant sister was one of the co-owners and she was employed as a Medical Officer in Bhabha Atomic Research Centre. This court held that the applicant could not be termed as a scientist to

whom the benefits of Section 13A(1) were available. This court further proceeded to hold that the ownership contemplated under Section 13A(1) was the sole ownership and not joint ownership. Notwithstanding this legal position, it requires to be noted in the instant petition that the applicants were the joint owners of the suit flat but they were not the members of the same family and each one of them had equal share in the suit flat. The share certificates have been transferred in their joint names and, therefore, the law laid down by this court in the case of Shripad Vasudeo Vatve (Supra) is not applicable. There is nothing on record to show that the applicant no.2, who is the sister-in-law of the applicant no.1, had at any time given up her joint ownership in favour of the applicant no.1 and his wife, the applicant no.3. This is not a case of an application filed by a co-owner. It is a case of the joint owners filing the application and on the basis of the certificate purportedly granted in favour of one of them. The said certificate may cover the applicant no.1 and his wife, the applicant no.3. The law laid down by this Court in the case of Shripad

Vasudeo Vatve does not apply to an application moved by joint owners, who are not the members of the same family or the joint Hindu family. The bonafide requirements of a co-owner applicant could be a sufficient reason to allow the application, but when the joint owners represent different families, bonafide requirements of one of the families would not be a sufficient reason to allow the application unless one of the joint owners representing a different family gives up the claim in favour of the other joint owners who are the members of the same family. The application moved is under the special provisions which are protective in nature and such a protection is available either to the present or past members of the armed forces or the scientific officers.

10. In the premises, this revision application succeeds and the same is hereby allowed. The impugned order passed by the Competent Authority is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

. However, it is clarified that this order does

not preclude the transposed respondent no.5 to initiated appropriate proceedings for eviction afresh.

(B.H. Marlapalle,J.)